

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
vs.) NO. 04-30046 MAP
)
ANTHONY MATOS)

AFFIDAVIT OF COUNSEL

Now comes Vincent A. Bongiorno, and being duly sworn hereby deposes and states as follows;

I was the attorney for Anthony Matos in the above-entitled action. After his Sentencing Hearing in October 2006 I met with Mr. Matos, his wife and Mr. Rinaldi from the United States Probation Department. Shortly after our meeting with Mr. Rinaldi Mr. Matos spoke with me about the Court's notice to him of his appellate rights. His wife was present and crying. Mr. Matos was visibly upset by this and I suggested we speak about the matter the following day after the impact of the days' events had died down.

I believe I spoke to Mr. Matos several days later after exchanging telephone calls with him. He felt the sentence was excessive and he would lose his family. He was extremely distraught. He wanted to take an appeal and we discussed the process in general. I felt the legal issues he had available on appeal were likely to be resolved against him. I also explained to him I did not have an appellate practice and he would have to obtain other counsel. I assumed at the time that he did not want to appeal but my memory of the event is unsettled. I say this because my usual practice is to file a notice of appeal and move to withdraw no matter what the client wished in order to protect the

record. I did not do that in this case. My memory is that Mr. Matos was very emotionally distraught during this conversation which lasted for an extended period of time as we discussed many different issues beyond his initial conversation regarding the appeal. At the time I received notice of his 2255 claim my memory of the entirety of that conversation was not clear, and so I cannot assert with any degree of certainty that he did not ask me to file an appeal on his behalf during the October meeting.

I do have a specific memory of Mr. Matos telling me to take an appeal in early December 2006 at or near the time his stay of execution was expired or was about to expire. Although I am unsure of the exact date I know it was early to mid-December and I did not take any action on that request.

Signed under the pains and penalties of perjury this 30 day of July 2008.

/s/ Vincent A. Bongiorno, Esq.